

AN ACT

relating to child custody evaluations; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 107.009(a), Family Code, is amended to read as follows:

(a) A guardian ad litem, an attorney ad litem, a child custody evaluator, or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, child custody evaluator, or amicus attorney.

SECTION 2. Sections 107.103(a) and (c), Family Code, as redesignated and amended by Chapter 1252 (H.B. 1449), Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

(a) The court, after notice and hearing or on agreement of the parties, may order the preparation of a child custody evaluation regarding:

(1) the circumstances and condition of:

(A) a child who is the subject of a suit;

(B) a party to a suit; and

(C) if appropriate, the residence of any person requesting conservatorship of, possession of, or access to a child who is the subject of the suit; and

1 (2) any issue or question relating to the suit at the
2 request of the court before or during the evaluation process.

3 (c) Except for an order appointing a child custody evaluator
4 who is qualified under Section 107.104(b)(3), an [An] order for a
5 child custody evaluation must include:

6 (1) the name of each person who will conduct the
7 evaluation;

8 (2) the purpose of the evaluation; ~~and~~

9 (3) a list of the basic elements of an evaluation
10 required by Section 107.109(c);

11 (4) a list of any additional elements of an evaluation
12 required by the court to be completed, including any additional
13 elements specified in Section 107.109(d); and

14 (5) the specific issues or questions to be addressed
15 in the evaluation.

16 SECTION 3. Sections 107.109(a), (c), and (d), Family Code,
17 are amended to read as follows:

18 (a) A child custody evaluator may not offer an opinion
19 regarding conservatorship of a child who is the subject of a suit or
20 possession of or access to the child unless each basic element of a
21 child custody evaluation as specified in [described by] this
22 section and each additional element ordered by the court, if any,
23 has been completed, unless the failure to complete an element is
24 satisfactorily explained as provided by Subsection (b).

25 (c) The basic elements of a child custody evaluation under
26 this subchapter consist of:

27 (1) a personal interview of each party to the suit

1 seeking conservatorship of, possession of, or access to the child;

2 (2) interviews, conducted in a developmentally
3 appropriate manner, of each child who is the subject of the suit who
4 is at least four years of age [~~, regardless of the age of the child,~~]
5 during a period of possession of each party to the suit but outside
6 the presence of the party;

7 (3) observation of each child who is the subject of the
8 suit, regardless of the age of the child, in the presence of each
9 party to the suit, including, as appropriate, during supervised
10 visitation, unless contact between a party and a child is
11 prohibited by court order or the person conducting the evaluation
12 has good cause for not conducting the observation and states the
13 good cause in writing provided to the parties to the suit before the
14 completion of the evaluation;

15 (4) an observation and, if the child is at least four
16 years of age [~~old~~], an interview of any child who is not a subject of
17 the suit who lives on a full-time basis in a residence that is the
18 subject of the evaluation, including with other children or parties
19 who are subjects of the evaluation, where appropriate;

20 (5) the obtaining of information from relevant
21 collateral sources, including the review of:

22 (A) relevant school records;

23 (B) relevant physical and mental health records
24 of each party to the suit and each child who is the subject of the
25 suit;

26 (C) relevant records of the department obtained
27 under Section [107.111](#);

1 (D) criminal history information relating to
2 each child who is the subject of the suit, each party to the suit,
3 and each person who lives with a party to the suit; and

4 (E) notwithstanding other law, records or
5 information from any other collateral source that may have relevant
6 information;

7 (6) [~~evaluation of the home environment of each party~~
8 ~~seeking conservatorship of a child who is the subject of the suit or~~
9 ~~possession of or access to the child, unless the condition of the~~
10 ~~home environment is identified as not being in dispute in the court~~
11 ~~order requiring the child custody evaluation,~~

12 [(7)] for each individual residing in a residence
13 subject to the child custody evaluation, consideration of any
14 criminal history information and any contact with the department or
15 a law enforcement agency regarding abuse or neglect; and

16 (7) [(8)] assessment of the relationship between each
17 child who is the subject of the suit and each party seeking
18 possession of or access to the child.

19 (d) The court may order additional elements of a child
20 custody evaluation under this subchapter, including the following
21 [~~consist of~~]:

22 (1) balanced interviews and observations of each child
23 who is the subject of the suit so that a child who is interviewed or
24 observed while in the care of one party to the suit is also
25 interviewed or observed while in the care of each other party to the
26 suit;

27 (2) an interview of each individual, including a child

1 who is at least four years of age, residing on a full-time or
2 part-time basis in a residence subject to the child custody
3 evaluation;

4 (3) evaluation of the residence [~~home environment~~] of
5 each party seeking conservatorship of a child who is the subject of
6 the suit or possession of or access to the child [~~, regardless of~~
7 ~~whether the home environment is in dispute~~];

8 (4) observation of a child who is the subject of the
9 suit with each adult who lives in a residence that is the subject of
10 the evaluation;

11 (5) an interview, if the child is at least four years
12 of age, and observation of a child who is not the subject of the suit
13 but who lives on a full-time or part-time basis in a residence that
14 is the subject of the evaluation;

15 (6) psychometric testing, if necessary, consistent
16 with Section 107.110; and

17 (7) the performance of other tasks requested of the
18 evaluator by the court, including:

19 (A) a joint interview of the parties to the suit;

20 or

21 (B) the review of any other information that the
22 court determines is relevant.

23 SECTION 4. Section 107.110(d), Family Code, is amended to
24 read as follows:

25 (d) If a child custody evaluator considers psychometric
26 testing necessary but lacks specialized training or expertise to
27 use the specific tests under this section, the evaluator may

1 designate a licensed psychologist to conduct the testing and may
2 request additional orders from the court.

3 SECTION 5. Section 107.1101(b), Family Code, is amended to
4 read as follows:

5 (b) If a child custody evaluator identifies the presence of
6 a potentially undiagnosed serious mental illness experienced by an
7 individual who is a subject of the child custody evaluation and the
8 evaluator is not qualified by the evaluator's licensure,
9 experience, and training to assess a serious mental illness, the
10 evaluator shall make one or more appropriate referrals for a mental
11 examination of the individual and may request additional orders
12 from the court.

13 SECTION 6. Subchapter D, Chapter 107, Family Code, is
14 amended by adding Section 107.1111 to read as follows:

15 Sec. 107.1111. CHILD CUSTODY EVALUATOR ACCESS TO OTHER
16 RECORDS. (a) Notwithstanding any other state law regarding
17 confidentiality, a child custody evaluator appointed by a court is
18 entitled to obtain records that relate to any person residing in a
19 residence subject to a child custody evaluation from:

- 20 (1) a local law enforcement authority;
21 (2) a criminal justice agency;
22 (3) a juvenile justice agency;
23 (4) a community supervision and corrections
24 department created under Chapter 76, Government Code; or
25 (5) any other governmental entity.

26 (b) Except as provided by this section, records obtained by
27 a child custody evaluator under this section are confidential and

1 not subject to disclosure under Chapter 552, Government Code, or to
2 disclosure in response to a subpoena or a discovery request.

3 (c) A child custody evaluator may disclose information
4 obtained under Subsection (a) in the child custody evaluation
5 report prepared under Section 107.113 only to the extent the
6 evaluator determines that the information is relevant to the child
7 custody evaluation or a recommendation made under this subchapter.

8 (d) A person commits an offense if the person recklessly
9 discloses confidential information obtained under Subsection (a)
10 in violation of this section. An offense under this subsection is
11 a Class A misdemeanor.

12 SECTION 7. Sections 107.113(a) and (b), Family Code, are
13 amended to read as follows:

14 (a) A child custody evaluator who conducts a child custody
15 evaluation shall prepare ~~[and file]~~ a report containing the
16 evaluator's findings, opinions, recommendations, and answers to
17 specific questions asked by the court relating to the evaluation.

18 (b) The person conducting a child custody evaluation shall
19 file with the court on a date set by the court notice that the report
20 under this section is complete. On the earlier of the date the
21 notice is filed or the date required under Section 107.114, the
22 person shall provide a copy of the report to:

23 (1) each party's attorney;

24 (2) each party who is not represented by an attorney;

25 and

26 (3) each attorney ad litem, guardian ad litem, and
27 amicus attorney appointed in the suit ~~[a report containing the~~

1 ~~person's findings and conclusions. The report shall be made a part~~
2 ~~of the record of the suit].~~

3 SECTION 8. Section 107.114(a), Family Code, is amended to
4 read as follows:

5 (a) Disclosure to the court or the jury of the contents of a
6 child custody evaluation report prepared under Section 107.113 is
7 subject to the rules of evidence.

8 SECTION 9. Section 411.1285, Government Code, is amended to
9 read as follows:

10 Sec. 411.1285. ACCESS TO CRIMINAL HISTORY RECORD
11 INFORMATION: DOMESTIC RELATIONS OFFICE AND CHILD CUSTODY
12 EVALUATOR. (a) A domestic relations office created under Chapter
13 203, Family Code, is entitled to obtain from the department
14 criminal history record information that relates to a person who is
15 a party to a proceeding in which the domestic relations office is
16 providing services permitted under Chapter 203, Family Code.

17 (a-1) A domestic relations office created under Chapter
18 203, Family Code, or a child custody evaluator appointed under
19 Chapter 107, Family Code, is entitled to obtain from the department
20 criminal history record information that relates to [~~er~~] a person
21 involved in a child custody evaluation under Chapter 107, Family
22 Code, in which the domestic relations office or child custody
23 evaluator has been appointed to conduct the child custody
24 evaluation.

25 (b) The department shall provide the domestic relations
26 office or the child custody evaluator with criminal history record
27 information not later than the 10th day after the date on which the

1 criminal history record information is requested.

2 (c) Criminal history record information requested under
3 this section, except for relevant information included in a report
4 of a child custody evaluation or adoption evaluation filed under
5 Chapter 107, Family Code, may not be released or disclosed by a
6 domestic relations office or a child custody evaluator to a person
7 other than the court ordering the child custody evaluation or
8 adoption evaluation except on court order or with the consent of the
9 person who is the subject of the criminal history record
10 information.

11 SECTION 10. The changes in law made by this Act apply only
12 to a suit affecting the parent-child relationship that is filed on
13 or after the effective date of this Act. A suit affecting the
14 parent-child relationship filed before the effective date of this
15 Act is governed by the law in effect on the date the application is
16 filed, and the former law is continued in effect for that purpose.

17 SECTION 11. This Act takes effect September 1, 2017.

H.B. No. 1501

President of the Senate

Speaker of the House

I certify that H.B. No. 1501 was passed by the House on May 4, 2017, by the following vote: Yeas 139, Nays 4, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1501 was passed by the Senate on May 17, 2017, by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor